

**ENTERED**

October 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CVR ENERGY INC,

Plaintiff,

VS.

AMERICAN ZURICH INSURANCE  
COMPANY, *et al*,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 4:17-CV-01284

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This case involves an insurance coverage dispute. Defendants' motion to dismiss was referred to United States Magistrate Judge Dena Hanovice Palermo pursuant to 28 U.S.C. § 636(b)(1)(B). [DE 20]. On February 12, 2018, Judge Palermo filed a Report and Recommendation, recommending that Defendants' motion to dismiss be granted in part and denied in part. [DE 27]. Defendant timely filed objections, [DE 29] Plaintiff filed a response [DE 30], and Defendants filed a reply [DE 31]. This Court previously overruled Defendants' objections and adopted the Report and Recommendation in its entirety, but inadvertently dismissed the entire case and entered a Final Judgment. [DE 32, 33]. The Court then withdrew the order adopting the Report and Recommendation and dismissing the case, and the Final Judgment. [DE 36 & 37]. Thus, the Defendant's objections on the R&R remain pending.

The Court has reviewed the R&R *de novo*. See FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *Funeral Consumers Alliance, Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 347 (5th Cir. 2012). The Court has also reviewed the parties' briefing in connection with the Defendants' motion to dismiss and objections, as well as the applicable legal authorities.

The Court, based on its *de novo* review, agrees fully with Judge Palermo's Report and

Recommendation. Accordingly, it is hereby determined that:

1. Defendants' Objections to the Report and Recommendation are OVERRULED.

2. Judge Palermo's Report and Recommendation is hereby ADOPTED in its entirety as the holding of the Court.

3. Accordingly, Defendants' motion to dismiss is GRANTED only with respect to Plaintiff's claims:

- a. that AZIC owed Gary-Williams a defense in the Wynnewood Litigation under the Workers' Compensation/Employers' Liability ("WC/EL") policy;
  - b. that AZIC owed CVR Refining a defense in the Wynnewood Litigation under the WC/EL policy;
  - c. that AZIC owed Wynnewood a defense in the Wynnewood Litigation under the WC/EL policy for claims asserted in the Original Petition and the First, Fourth, and Fifth Amended Petitions;
  - d. that AZIC owed CVR Partners a defense in the Wynnewood Litigation under the WC/EL policy for claims asserted in the Fourth and Fifth Amended Petitions;
  - e. that ZAIC owed any duty to defend in the Wynnewood Litigation under the WC/EL Policy;
  - f. under section 542.003 of the Texas Insurance Code; and
  - g. based upon Defendants' May 6, 2015 reservation of rights letter.
4. Defendants' motion to dismiss is DENIED in all other respects.

It is so ORDERED.

SIGNED on this 26<sup>th</sup> day of October, 2018.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt  
United States District Judge